

DOCKET FILE COPY ORIGINAL

original
RECEIVED

Before The

Federal Communications Commission
Washington, D.C. 20554JUN 18 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

MARTHA J. HUBER, *et al.*,)For a Construction Permit for a)
New FM Station on Channel 234A)
in New Albany, Indiana)MM Docket No.
93-51

TO: The Honorable Administrative Law Judge Sippel

REPLY TO OPPOSITIONTO SECOND MOTION OF MIDAMERICA TO ENLARGE ISSUESAGAINST MARTHA J. HUBER

Midamerica Electronics Service, Inc., by Counsel hereby states its Reply to the *Opposition to Second Motion of Midamerica to Enlarge Issues Against Martha J. Huber* filed on June 8, 1993.

Midamerica moved to enlarge the issues in this proceeding with respect to Martha J. Huber with the addition of a Section 1.65 "failure to report" issue and a financial qualifications issue.¹

¹Since Motions to enlarge the issues against Huber on financial qualifications grounds have already been added against Huber only a section 1.65 issue need be added now.

I. BACKGROUND

Huber's application lists a \$350,000 loan from Citizens Fidelity Bank and Trust Company, Indiana (hereinafter sometimes referred to as "CF") as her sole source of financing. In responding to various motions to enlarge the issues against her, Martha J. Huber submitted a letter, dated May 5, 1993, purportedly written by the bank officer who had apparently authored the letter on which Huber is relying to establish her financial qualifications.

II. HUBER HAS NEVER AMENDED HER APPLICATION TO REPORT

A CHANGE IN HER FINANCIAL SOURCE.

In its Second Motion, Midamerica pointed out that Huber's original letter was written on CF stationary under date of October 29, 1991. and that Huber's application lists her sole source of funds as being a \$350,000 bank loan from CF. In her *Consolidated Opposition to Motions to Enlarge Issues*, Huber's supposed banker wrote on what appears to be the stationary of PNC Bank.

As was also noted in the Second Motion, Huber has never, to the best of the undersigned Counsel's knowledge, amended her application to report any change in the source of the funds relied on for financial certification.

Huber's *Opposition* contains another letter that purportedly is from Leo Tierney. Mr. Tierney states that:

On October 24, 1991, this bank was named Citizens Fidelity Bank, Indiana, an Indiana corporation wholly owned by Pittsburgh National Corporation, a bank holding company. In February of 1993, the corporate name of Citizens Fidelity Bank, Indiana was changed to PNC Bank, Indiana, Inc. There has been no change in bank ownership, but only a name change, and there has been no effect on the bank letter provided you.

The Commission requires that the source(s) of funds on which an applicant relies to meet its obligation to demonstrate its financial qualifications be identified to the Commission. FCC Form 301 requires that the name, address and telephone number of sources be identified. This permits at least cursory examination of the proposed sources of funds.

In this proceeding, a financial qualifications issue has already been added against Huber. Were the competing applicants to attempt to subpoena officials or records of the Citizen's Fidelity Bank, Indiana, it is quite possible (perhaps likely) that the subpoena would not be complied with because, apparently, there no longer is a financial institution under that name. Since the name of the corporation which is to be subpoenaed is required for the subpoena, the name of Huber's financial institution is *per se* material to this proceeding.

Mr. Tierney's letter cannot be relied upon by Huber for the truth of the matter contained therein. It is not in the form of a declaration under the penalty of perjury; nor is it notarized. But, that Huber felt compelled to get yet another letter from Tierney to explain the situation is, in and of itself, demonstration that Huber has not kept the Commission properly apprised of substantial and material facts regarding her application. Huber's need to provide new information in an attempt to defeat the addition of a "failure to report" issue more than amply demonstrates that a substantial and material issue exists as to her compliance with section 1.65 of the Commission's Rules. Yet, Huber still has not amended her application to report the information (contained in Tierney's letter) that she relies on to defeat the addition of the issue.

Huber's failure to report constitutes a serious failure of Huber to comply with section 1.65 of the Commission's Rules., which provides in pertinent part that:

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except where paragraph (b) applies, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate. Except where paragraph (b) applies, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with §1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

Midamerica respectfully submits that Huber has not complied with the Commission's Rule. The addition of a section 1.65 failure to report issue is appropriate.

III. THE ISSUES TO BE ADDED

[REDACTED]

CERTIFICATE OF SERVICE

I, Valerie McGuire, a secretary in the law firm of Hardy and Carey, do hereby certify that a copy of the above and foregoing document has been served on counsel for all parties to this proceeding, by mailing a copy of same via U.S. Mail, postage prepaid, this 18th day of June, 1993, addressed to the following:

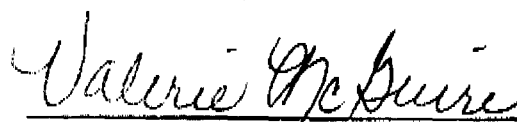
Honorable Richard Sippel*
Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

James Shook, Esq.*
Federal Communications Commission
Hearing Branch
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Morton L. Berfield, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036
Counsel for Martha J. Huber

Henry A. Solomon
Haley, Bader & Potts
4350 N. Fairfax Drive, Suite 900
Arlington, VA 22203-1633

Donald J. Evans, Esq.
McFadden, Evans & Sill
1627 Eye Street, N.W.
Suite 810
Washington, D.C. 20006
Counsel for Station Communications, Inc.



Valerie McGuire

*By Hand